

## **LBNL – PROCUREMENT STANDARD PRACTICES**

**Section: 19 Socioeconomic Programs**

**Subject: 19.3 Set-Asides and Non-Competitive Awards**

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**PURPOSE:** This standard practice (SP) describes the procedures for setting-aside subcontracts for small business (SB) concerns, and for making non-competitive awards.

**POLICY:** The Laboratory shall set-aside subcontracts for SB concerns when it is expected that offers can be obtained from two or more responsible SB concerns that assure reasonable prices, quality, and acceptable delivery.

**SCOPE:** This SP applies to all subcontracts, including purchase card transactions.

**Exceptions** This SP does not apply to purchases from required sources of supply and Federal Supply Schedule contracts.

### **DEFINITIONS:**

**Fair Market Price** As used herein, fair market price means a price based on reasonable costs under normal market conditions and not on lowest possible cost. A fair market price shall be the price achieved in accordance with the price analysis guidelines in SP 15.6, *Cost/Price Analysis*.

**SB Concern** As used herein, the term SB concern includes: small business (SB), HUBZone small business (HZSB), small disadvantaged business (SDB), service-disabled veteran-owned small business (SDVOSB), veteran-owned small business (VOSB), women-owned small business (WOSB), and 8(a) concerns.

See SP 19.1, *Socioeconomic Programs - General*, for definitions of the above SB Concern categories.

**SB Set-Aside** A SB set-aside is the reserving of an acquisition exclusively for SB concerns.

### **PROCEDURES:**

**SB Set Asides - General** A competitive solicitation may be set-aside for all SB concerns or for any category of SB concerns.

Subcontracts for \$100,000 or less shall be set-aside for SB concerns, provided they are able to meet the Laboratory's requirements and the award can be made at fair market prices.

The reason why a subcontract exceeding \$25,000 was not set-aside for SB concerns must be documented.

Subcontracts exceeding \$100,000 shall be set-aside for SB concerns when there is a reasonable expectation of receiving

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offers from two or more responsible SB concerns that are competitive in terms of market prices, quality, and delivery.

For subcontracts for research and development services, there must also be a reasonable expectation of obtaining the best scientific and technological sources from SB concerns, consistent with the demands of the proposed acquisition for the best mix of cost, performance, and schedule.

Subcontracts of any dollar value may be set-aside to SDVOSB concerns if there is a reasonable expectation that two or more SDVOSB concerns will submit offers and that the award can be made at a fair market price.

### **SB Set Asides - Construction Subcontracts**

Construction subcontracts for \$3 million or less shall be set aside for SB concerns, provided they are able to meet the Laboratory's requirements and the award can be made at fair market prices.

### **Non-Competitive Awards**

#### **SB Concerns**

Subcontracts of \$100,000 or less can be awarded to SB concerns on a non-competitive basis provided they are able to meet the Laboratories requirements and the award can be made at fair market prices.

#### **HUBZone (HZSB) SB Concerns**

Subcontracts for \$3 million or less [\$5 million or less for manufacturing based on the applicable North American Industry Classification System (NAICS) code] may be awarded on a non-competitive basis to HZSB concerns provided that:

- Only one HZSB concern can satisfy the requirement;
- The requirement is not currently being performed by a non-HZSB concern; and
- Award can be made at a fair and reasonable price.

Note: See *Exceptions* below.

#### **Service-Disabled Veteran-Owned SB Concerns (SDVOSB)**

Subcontracts for \$3 million or less [\$5 million or less for manufacturing based on the applicable NAICS code] may be awarded on a non-competitive basis to SDVOSB concerns provided that:

- Only one SDVOSB can satisfy the requirement; and
- The award can be made at a fair and reasonable price.

Note: See *Exceptions* below.

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8(a) Concerns Subcontracts for \$3 million or less [\$5 million or less for manufacturing based on the applicable North American Industry Classification System (NAICS) code] may be awarded on a non-competitive basis to 8(a) concerns offering a fair and reasonable price for the required goods or services. Prior to award, the procurement specialist must verify that the offeror is certified as an 8(a) concern by the SBA.

Exceptions The above policy regarding non-competitive awards to HZSB and SDVOSB concerns does not apply to:

- Requirements that can be satisfied by products or services of the blind or severely handicapped or products made by Federal Prison Industries, Inc.;
- Orders under indefinite delivery subcontracts;
- Orders against Federal Supply Schedules (see SP 8.5, *Orders Against GSA Federal Supply Schedule*); or
- Requirements currently being performed by an 8(a) concern unless the Small Business Administration (SBA) consents to release the requirement from the 8(a) program.

### Other Requirements Applicable to Set- Asides

**Notice of Intent** — Offerors must be notified of the Laboratory's intent to award a subcontract as a set-aside to a qualified SB concern.

**North American Industry Classification System (NAICS) Codes and Size Standards** — NAICS codes and size standards must be specified in all solicitations, as described in SP 19.1, *Socioeconomic Programs – General*.

**Only One Response** — If under a competitive set-aside solicitation, an offer is received from only one responsive, responsible SB concern, the award should be made as a set-aside to that SB concern.

**Unqualified Businesses** — Offers received from concerns that do not qualify as a SB concern will be considered non-responsive and must be rejected, or the solicitation may be modified to remove the set-aside restriction and resolicited on an unrestricted basis.

**Coding** — Subcontracts that are set-aside should be coded as SB set-asides in the procurement management information system. Awards that qualify for coding in more than one category may be counted in every qualifying category. All SB set-aside awards qualify for coding as a SB concern. For example, a set-aside award to a SDB concern may be counted

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as a SB set-aside and a SDB award.

Only non-competitive awards of \$100,000 or less may be coded as a SB set-aside.

### **RESPONSIBILITIES:**

#### **Procurement Specialist**

The procurement specialist is responsible for:

- Setting aside subcontracts for SB concerns in accordance with this SP;
- Notifying offerors of the intent to set-aside subcontracts by including the set-aside clause in applicable solicitations and subcontracts; and
- Coding subcontracts to reflect set-aside awards.

#### **REFERENCES:**

Prime Contract Clause I.15 - Utilization of Small Business Concerns

Prime Contract Clause I.16 - Small Business Subcontracting Plan

Prime Contract Appendix H - Small Business, Veteran-Owned Small Business, Service-Disabled Veteran-Owned Small Business, HubZone Small Business, Small Disadvantaged Business, and Women-Owned Small Business Model Subcontracting Plan

DOE Acquisition Letter 2005-08, Small Business Program